

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

BellSouth Corporation

Petition for Rulemaking to Change
The Distribution Methodology for Shared
Local Number Portability and Thousands-Block
Number Pooling Costs

RM-11299

**REPLY TO COMMENTS ON
PETITION FOR RULEMAKING**

BELLSOUTH CORPORATION

Angela N. Brown

Its Attorney

Suite 4300
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375-0001
(404) 335-0724

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EXECUTIVE SUMMARY

As BellSouth demonstrated in its petition and the record confirms, it is appropriate and timely for the Commission to evaluate the continuing lawfulness of the existing revenue-based mechanism for distributing shared local number portability (“LNP”) and thousands-block pooling costs in light of the various changes in the marketplace that have occurred since the Commission first adopted this mechanism in 1998. The Telecommunications Act of 1996 (“1996 Act”) directs the Commission to ensure that the costs of number administration and LNP are borne by providers on a “competitively neutral” basis,¹ and the requested rulemaking is an appropriate vehicle in which to make this determination.

The record convincingly shows that there are significant issues and controversies surrounding the current cost distribution methodology that justify commencing a rulemaking. Even parties that oppose the adoption of a usage-based mechanism as proposed by BellSouth recognize the deficiencies in the current system, such as requiring the industry to pay for the use of the regional databases for activities unrelated to porting telephone numbers between providers and pooling. In addition, the record reveals a controversy regarding whether providers of Voice over Internet protocol (“VoIP”) service and other non-carriers that use telephone numbering resources should contribute to the shared industry costs. These and other issues surrounding the cost distribution mechanism can and should be addressed through a rulemaking where a complete record can be developed.

Given the Commission’s obligation to ensure that Section 251(e)(2)’s mandate of competitive neutrality is upheld, BellSouth urges the Commission to grant BellSouth’s petition

¹ 47 U.S.C. § 251(e)(2).

and initiate the requested rulemaking to consider a usage-based mechanism for distributing shared LNP and pooling costs among providers. As the record demonstrates, a number of factors weigh strongly in favor of Commission action to modify the existing method of distributing shared LNP and pooling costs, including (1) years of experience with LNP and number pooling; (2) the explosive growth in the wireless sector; (3) the proliferation of Internet Protocol (“IP”)-based services; (4) the maturation of the competitive local exchange carrier (“CLEC”) market; (5) the significant volume of wireless porting activity since the advent of wireless LNP; (6) the use of numbering resources and the regional databases by non-carriers; (7) the use of the regional databases for activities that are unrelated to porting between providers and pooling; (8) escalating shared industry costs; and (9) Commission review of the propriety of revenue-based assessment mechanisms in other contexts (*e.g.*, universal service contribution methodology). In light of the above, the Commission should issue a notice of proposed rulemaking without delay in order to address these and other issues surrounding the existing revenue-based mechanism for distributing LNP and pooling costs and consider replacing the current mechanism with a usage-based methodology that requires carriers to pay for the costs that they cause.

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On November 3, 2005, BellSouth filed a petition² asking the Commission to initiate a rulemaking proceeding to change the methodology for distributing the shared costs of local number portability (“LNP”) and thousands-block number pooling among service providers as set forth in Section 52.32³ of the Commission’s rules and related Commission orders.⁴ Specifically, BellSouth requested that the Commission issue a notice of proposed rulemaking to consider replacing the current method of allocating shared industry costs for LNP and pooling based upon

² *BellSouth Corporation Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs*, RM-11299, Petition for Rulemaking (filed Nov. 3, 2005) (“BellSouth Petition”).

³ 47 C.F.R. § 52.32.

⁴ *See Telephone Number Portability*, CC Docket No. 95-116, RM 8535, *Third Report and Order*, 13 FCC Rcd 11701 (1998) (“*Third Report and Order*”) (telephone number portability costs); *Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, 7667, 7668-69, ¶¶ 204, 207 (2000) (thousands-block number pooling costs).

end-user telecommunications revenues with a usage-based mechanism that requires carriers to pay for those LNP and pooling costs that they cause.

I. THE COMMISSION SHOULD NOT INITIATE A BROAD INQUIRY IN ADVANCE OF A RULEMAKING.

The Commission should not issue a notice of inquiry as a precursor to a rulemaking as proposed by a few parties.⁵ Such a general inquiry is unnecessary and would serve no valid purpose in this case. As AT&T points out, the Commission has already indicated that the revenue-based distribution methodology adopted in 1998, though deemed appropriate at that time, was not necessarily a permanent mechanism.⁶ The Commission simply believed that, because LNP was in its infancy, a revenue-based system could potentially minimize any risks to new entrants.⁷

The time has come for the Commission to revisit its assumptions and rules regarding the distribution of shared costs in light of the many changes that have occurred since the original mechanism was established. For example, both the industry and the Commission now have years of experience with LNP and pooling; competition between and among wireline and wireless providers continues to flourish; non-carriers and other entities are using the regional databases not only for LNP and pooling but also for certain activities unrelated to traditional LNP and pooling; the shared costs incurred by the industry have risen dramatically over the last several years; and the Commission is considering the propriety of using revenue-based assessment mechanisms in other contexts, such as universal service. All of these changes justify

⁵ See COMPTTEL (“COMPTTEL”) Statement in Opposition at 4-5; Integra Telecom’s (“Integra”) Opposition at 4-5.

⁶ AT&T Inc. (“AT&T”) Comments at 2-3.

⁷ *Third Report and Order*, 13 FCC Rcd at 11745, ¶ 88.

a re-evaluation of the existing cost distribution mechanism to determine whether it continues to meet the competitive neutrality mandate of Section 251(e)(2).

The Commission has granted similar requests for rulemakings in other settings rather than proceeding with a notice of inquiry as a preliminary step. For example, in response to a petition for rulemaking to address the rate charged for dial-around calls from payphones, the Commission issued an *NPRM* in order “to determine whether current conditions in the payphone market warrant any change in the default rate of payphone compensation, and if so, what the new default should be.”⁸ The Commission reasoned that, “[g]iven the mandate of section 276 to ‘ensure that payphone service providers are fairly compensated’ . . . , it is only logical that we should periodically re-examine the per-call compensation rate, especially when underlying industry conditions change.”⁹

The same rationale applies here. Section 251(e)(2) mandates that the Commission ensure that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis.”¹⁰ Similar to the payphone situation, it is appropriate for the Commission to review periodically whether the mechanism for distributing shared LNP and pooling costs continues to meet the statutory requirement of competitive neutrality, especially when the marketplace has changed so dramatically. The Commission therefore should not defer the issuance of a notice of proposed rulemaking in order to conduct any preliminary fact-gathering. To do so would be a

⁸ *Request to Update Default Compensation Rate for Dial-Around Calls from Payphones*, WC Docket No. 03-225; RM No. 10568, *Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 22811, 22817, ¶ 17 (2003).

⁹ *Id.* ¶ 18.

¹⁰ 47 U.S.C. § 251(e)(2).

waste of administrative and industry resources and would only serve to introduce unnecessary delay.

II. THE ISSUES RAISED BY COMMENTERS CAN AND SHOULD BE RESOLVED THROUGH A RULEMAKING.

The record demonstrates that there are legitimate questions surrounding the continuing lawfulness of the current cost distribution mechanism for LNP and pooling thereby making the requested rulemaking not only appropriate but also necessary. As such, the Commission should reject arguments that BellSouth's petition is procedurally deficient because it lacks specificity.¹¹ BellSouth's petition is clear in its request that the Commission consider replacing the current method of assessing shared industry costs based upon end-user telecommunications revenue with a usage-based mechanism that distributes costs based upon a provider's use of the relevant databases.

Moreover, the very purpose of the rulemaking sought by BellSouth is to create the dialogue necessary to fully vet BellSouth's proposal. As part of the rulemaking, the Commission could ask commenters to address BellSouth's proposed usage-based mechanism. Specifically, the Commission could pose some of the questions asked by commenters such as Cox Communications, Inc. ("Cox") including: (1) what types of transactions should be assessed on a usage basis¹² and (2) should providers be charged for downloading information from the regional databases.¹³ These are valid questions that can and should be included in a notice of proposed rulemaking. The same is true for the following questions, which the Commission could ask in its *NPRM*:

¹¹ See Cox Communications ("Cox") Comments at 3.

¹² *Id.*

¹³ *Id.* at n.2.

- (1) How have shared industry costs changed over the years on a national and regional basis?
- (2) How have the contributions of providers changed over the years?
- (3) What are the different types of carriers and other entities that utilize the shared databases today and for what purposes?
- (4) What are some of the advantages and disadvantages of a usage-based system?
- (5) Should VoIP and other non-carriers that use or benefit from the shared databases contribute to the shared costs?
- (6) Should the Commission define a “billable transaction” for purposes of shared industry costs and, if so, what should that definition be?
- (7) Are there any categories of costs incurred today that should be expressly excluded from shared industry costs?
- (8) Should shared costs attributable to LNP be treated differently than the shared costs attributable to pooling?
- (9) Is it possible to segregate shared costs attributable to LNP and shared costs attributable to pooling?

These questions not only are related to the various issues raised by parties responding to BellSouth’s petition but also are of the nature that the Commission would normally resolve in a rulemaking.

In addition, the Commission could seek comprehensive data from NeuStar and providers in order to gain a better understanding of the current situation.¹⁴ Clearly, there are a host of legitimate issues regarding the current methodology for distributing shared LNP and pooling

¹⁴ XO Communications Services Inc. and Xspedius Communications, LLC complain that BellSouth has not provided data for other carriers in order to support its petition. XO Communications Services, Inc. and Xspedius Communications LLC (“XO and Xspedius”) Comments at 10. BellSouth, however, does not have access to the LNP and pooling data of other companies. As indicated, it would be appropriate for the Commission to request such data in the requested rulemaking.

costs that warrant serious Commission consideration, and a rulemaking proceeding is the appropriate mechanism for examining any necessary changes to the current mechanism.

III. CHANGED CIRCUMSTANCES JUSTIFY A REVIEW OF THE EXISTING METHODOLOGY FOR DISTRIBUTING SHARED LNP AND POOLING COSTS.

A number of commenters argue that little, if anything, has changed in the past eight years to justify changing or even reconsidering the current cost distribution mechanism.¹⁵ This argument lacks merit because it clearly ignores the competitive and technological realities of the marketplace. As the Connecticut Department of Public Utility Control (“CTDPUC”) acknowledges, the communications landscape is vastly different than it was when the 1996 Act was passed¹⁶ or even eight years ago when the Commission first adopted the revenue-based mechanism. These changes and their affect on the overall shared LNP and pooling costs as well as certain classes of providers cannot and should not be dismissed as inconsequential.

A. Competition From All Segments of the Communications Marketplace Is Real and Thriving.

Some commenters assert that the current revenue-based mechanism should be retained so as not to competitively disadvantage CLECs or other providers more likely to use LNP, including VoIP providers.¹⁷ These parties claim that CLECs are in no better position than they were eight years ago and therefore there is a continuing need for other providers to subsidize the LNP and pooling costs caused by CLECs. This claim, however, is inconsistent with the realities of today’s market. As BellSouth pointed out in its comments, CLECs have made tremendous

¹⁵ See, e.g., COMPTTEL Comments at 2; Cox Comments at 5-6; XO and Xspedius Comments at 8-9; T-Mobile USA, Inc. (“T-Mobile”) Comments at 3-4.

¹⁶ Connecticut Department of Public Utility Control (“CTDPUC”) Comments at 3.

¹⁷ See, e.g., Cox Comments at 5; CTDPUC Comments at 3; T-Mobile Comments at 2, 6.

inroads in winning customers away from incumbents.¹⁸ Between 1999 and 2004, the number of end-user switched access lines served by CLECs increased from 4.3% to 18.5% in 2004.¹⁹ The progress and success of CLECs in gaining market share therefore is real and cannot be dismissed.

Moreover, contrary to the suggestion of T-Mobile,²⁰ there is no requirement that CLECs or other providers must achieve a certain market share or that incumbents must lose a specific market share before the Commission may revise the mechanism for distributing LNP and pooling costs. The Commission's obligation is to ensure that the distribution mechanism remains "competitively neutral" and, according to the Commission's own interpretation, does "not disproportionately burden one carrier over another."²¹ Continuing to require certain carriers, such as BellSouth, to bear an overwhelmingly large percentage of this cost burden, despite the growth in competition between CLECs and incumbents (not to mention other providers of voice services), is not competitively neutral.

In addition, it is disingenuous for commenters such as T-Mobile to claim that growth in the wireless market is irrelevant and that intermodal competition "has yet to develop,"²² thereby negating the need to change the distribution mechanism. According to the most recent CMRS

¹⁸ BellSouth Petition at 12.

¹⁹ *Local Telephone Competition: Status as of December 31, 2004*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 1 (July 2005) ("Local Competition Report"). It appears that Time Warner's statement that incumbents control the vast majority of customers – approximately 90% of the switched access lines – is an overstatement based upon the Commission's Local Competition Report, which Time Warner cites. See Time Warner Opposition at 5.

²⁰ See T-Mobile Comments at 4.

²¹ *Third Report and Order*, 13 FCC Rcd at 11733, ¶ 57.

²² T-Mobile Comments at 6.

Competition Report, the overall wireless penetration rate in the U.S. is 62%.²³ Further, “[a]t the end of 2004, there were more wireless subscribers than wireline in the United States.”²⁴ Indeed, the number of wireless subscribers has more than tripled since 1998, rising from 69.2 million as of December 1998 to 184.7 million as of December 2004.²⁵ Further, as the Commission points out, “[t]he number of mobile wireless carriers offering service plans designed to compete directly with wireline local telephone service continues to increase.”²⁶

Wireless service does not have to displace wireline service in a household or business completely in order for effective competition to exist (even though that is precisely what is happening across various market segments).²⁷ As the Commission points out, “consumers

²³ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 05-71, *Tenth Report*, 20 FCC Rcd 15908, 15979, ¶ 195 (2005) (“*Tenth CMRS Competition Report*”).

²⁴ *Id.* at 15980, ¶ 197.

²⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, *Fourth Report*, 14 FCC Rcd 10145, 10152 (1999); *Tenth CMRS Competition Report*, 20 FCC Rcd at 15912, ¶ 5.

²⁶ *Tenth CMRS Competition Report*, 20 FCC Rcd at 15981, ¶ 199.

²⁷ Growing numbers of wireless subscribers are abandoning their wireline service altogether. During the last few years, the percentage of wireless users that have given up wireline service has grown to 7-8 percent. Michael Balhoff, Managing Director, Telecommunications Group, Legg Mason, prepared witness testimony before the Subcommittee on Telecommunications and the Internet of the House Energy and Commerce Committee, Washington, DC (Feb. 4, 2004). Approximately 3 million additional wireless subscribers are now giving up their wireline phones each year, and even larger percentages of young consumers – who will make up the next generation of homeowners – are disconnecting their wireline service altogether, making it likely that the rate of substitution will increase even further in the future. B. Bath, Lehman Brothers, *Final UNE-P Rules Positive for RBOCs* at Figure 2 (Dec. 10, 2004). A. Quinton, *et al.*, Merrill Lynch, *Telecom Services: Unraveling Revenues* at 5 (Nov. 20, 2003) (“[W]e believe that demographic trends favor wireless. . . . So, as the US population ages, more young people are likely to become wireless subscribers – and either displace the purchase of a wireline service with wireless or cut the cord on an existing line.”); S. Ellison, IDC, *U.S. Wireline Displacement of Wireline Access Lines Forecast and Analysis, 2003-2007* at 7 (Aug. 2003) (“The first communications services purchased by youth and young adults are now often

appear increasingly to choose wireless service over traditional wireline service, particularly for certain uses.”²⁸ Clearly, the communications world is moving toward convergence with different technologies offering similar services competing with each other. Thus, it is myopic to only consider competition in terms of incumbents competing with CLECs. Incumbents are competing with CLECs, VoIP providers, wireless providers, and cable companies, to name a few, and LNP is facilitating much of this competition.

B. The Use of Numbering Resources and the Regional Databases Has Changed Since the Commission First Adopted the Current Cost Distribution Methodology.

In addition to changes in the competitive marketplace, there have been significant changes not only in who has access to numbering resources but also the purposes for which the regional databases are being used today. A number of parties including Verizon point out that providers are increasingly using the databases “to accomplish a wide variety of tasks unrelated to number portability or pooling, such as grooming their own networks and offering new services to customers, while shifting the costs of those transactions to other carriers through the revenue-based allocation system.”²⁹ Verizon details how these transactions, which have nothing to do with a new carrier winning a customer and porting a number or pooling to conserve numbers, have increased steadily. According to Verizon, intra-service provider transactions and transactions known as “modifies,” which occur when a service provider changes an existing

wireless services. Adoption of wireless by teenagers is increasingly being translated into forgoing traditional primary access lines when such wireless users go to college or otherwise establish their own households.”).

²⁸ *Tenth CMRS Competition Report*, 20 FCC Rcd at 15980, ¶ 197.

²⁹ Verizon Comments at 1.

record related to its network, accounted for nearly half of all of the billable transactions in 2005.³⁰

Similarly, Cox points out that the regional databases are “being used for a myriad of applications, many of which do not involve telecommunications service providers.”³¹ Two examples provided by Cox include: (1) use of databases by telemarketers to ensure that they do not call any telephone number assigned to a wireless customer; and (2) NeuStar’s marketing of services that involve access to the databases by non-carriers for purposes other than voice calls.³² As a result of these additional uses, Cox suggests “requiring additional contributions to the costs of the NPAC from entities that are not using the database directly for portability or pooling purposes.”³³

Interestingly enough, BellSouth’s proposed usage-based mechanism would address Cox’s concern about entities using the databases for activities outside of LNP and pooling. Under a usage-based system, entities that use the regional databases for non-porting or non-pooling purposes would pay for such access on an individual basis. This solution is simple, easy to administer, and ensures that no class of providers is competitively disadvantaged by having to bear the costs caused by other providers.

Cox also correctly points out “[a]nother defect in the current methodology.”³⁴ As the Commission is aware, certain VoIP providers, which compete head-to-head with wireline and wireless carriers, use numbering resources but currently do not contribute to the shared costs of

³⁰ *Id.* at 7.

³¹ Cox Comments at 10.

³² *Id.* at 10-11.

³³ *Id.* at 11.

³⁴ *Id.*

number administration, LNP, and pooling. Cox therefore supports expanding the universe of entities required to contribute to shared industry costs to include non-carriers such as VoIP.³⁵

The Commission could address the issue of expanding the base of contributors in the requested rulemaking. The record demonstrates support for requiring VoIP providers to contribute to the costs of number administration, LNP, and pooling. According to Time Warner, “it is sound policy and consistent with the spirit of Section 251(e)(2) to require that providers of VoIP contribute to LNP and pooling on a competitively neutral basis.”³⁶ BellSouth agrees.

As BellSouth pointed out in its petition,³⁷ the Future of Numbering Working Group submitted a report to the Commission entitled “VoIP Service Providers Access Requirements for NANP Resource Assignments.”³⁸ One of the recommendations in this report is for the Commission to adopt the principle that all providers should share and bear the same “numbering-related” responsibilities.³⁹ These responsibilities would include, among other things, requiring VoIP providers to port telephone numbers upon request and to pay a portion of the shared LNP and pooling costs incurred by the industry. The issue of VoIP providers contributing to the shared industry costs for numbering is generating more and more debate and can be addressed as part of the requested rulemaking. For example, the Commission could seek comment on its authority to subject VoIP and other entities to its cost distribution and recovery rules as well as whether a usage-based mechanism would be appropriate.

³⁵ *Id.* at 10-12.

³⁶ Time Warner Opposition at 8, n.5.

³⁷ BellSouth Petition at 13-14.

³⁸ VoIP Service Providers Access Requirements for NANP Resource Assignments, NANC Report and Recommendation by the Future of Numbering Working Group (July 15, 2005).

³⁹ *Id.* at 3.

Cox also suggests that the Commission distribute the shared costs of LNP and pooling among VoIP and “any other communications service providers that take advantage of numbering resources” based on their retail revenues.⁴⁰ The potential problem with this approach is the classification of revenues. The current cost distribution mechanism is based upon providers’ “telecommunications” revenues. In the absence of a Commission decision regarding the regulatory classification of VoIP providers, it unclear whether VoIP providers would classify their retail revenues as telecommunications revenues or information services revenues.

Continued reliance on a purely revenue-based cost distribution system therefore is problematic. The Commission has already witnessed gaming opportunities by some providers playing loose with regulatory classifications.⁴¹ In addition, the Commission has recognized that marketplace developments are “increas[ing] the strain on regulatory distinctions.”⁴² As a result, the Commission is considering moving away from a revenue-based methodology for assessing universal service contributions to a mechanism based upon telephone numbers. As Chairman Martin has noted, such an approach is easy to administer, readily understandable by customers,

⁴⁰ Cox Comments at 11-12.

⁴¹ See, e.g., *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133 & 05-68, *Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 4826 (2005). In this order, the Commission rejected arguments by AT&T that its enhanced prepaid calling cards were information services and therefore not subject to intrastate access charges and universal service contributions. AT&T had touted the fact that it had “saved” \$160 million in universal service contributions since the beginning 1999 by classifying these prepaid calling card services as information services. The Commission directed AT&T to submit revised Forms 499-A to account accurately for the telecommunications revenue generated from these services.

⁴² *Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45, *et al.*, *Further Notice Of Proposed Rulemaking and Report and Order*, 17 FCC Rcd 3752, 3758, ¶ 13 (2002).

and promotes telephone number conservation.⁴³ As the record demonstrates, the current revenue-based methodology for shared LNP and pooling costs is subject to some of the same weaknesses as the revenue-based system for assessing universal service contributions (*e.g.*, the exclusion of non-telecommunications providers from the pool of contributors). Given the Commission's acknowledgement that marketplace developments have and will continue to "blur[] the distinctions between . . . telecommunications/non-telecommunications revenues,"⁴⁴ it is clear that purely revenue-based assessment mechanisms are becoming less viable and reliable and impose disproportionate burdens on certain classes of carriers.

In sum, there is sufficient evidence in the record to support the initiation of a rulemaking proceeding to change the distribution methodology for LNP and pooling costs. Competition in the marketplace and the evolving use of the regional databases "for a variety of purposes that have nothing to do with local number portability or number pooling,"⁴⁵ combined with the increased use of the databases by non-carriers, justify a re-evaluation of the current distribution mechanism through a rulemaking.

C. Shared Industry Costs Have Escalated Dramatically Over the Last Several Years with a Disproportionate Adverse Effect on Large Carriers.

Arguments that large carriers are not adversely affected or competitively disadvantaged under the current revenue-based mechanism are flawed. Time Warner asserts that the current regime is appropriate "because carriers' contributions under the current regime have increased

⁴³ Remarks of FCC Chairman Kevin J. Martin, TELECOM 05 Conference, United States Telecom Association, Las Vegas, NV, October 26, 2005, Delivered Via Satellite from Washington, DC.

⁴⁴ *Federal-State Joint Board on Universal Service*, *supra* note 42, at 3758, ¶ 12.

⁴⁵ Verizon Comments at 5.

only in proportion to their relative size.”⁴⁶ The evidence in the record proves the fallacy of this assertion. Both BellSouth’s access lines and revenues have either remained flat or declined over recent years. Nevertheless, BellSouth’s payments to cover its allocated share of the Southeast region’s industry costs have increased at an exceedingly high rate.

This situation is not unique to the Southeast region. As the record demonstrates, the upward trend in shared costs is occurring nationwide and is only expected to continue climbing. According to Verizon, “the total number of transactions is forecast to reach over 272 million in 2006 – more than one transaction for every adult in the United States.”⁴⁷ A growing percentage of this enormous volume of transactions, however, is likely to be generated by activities that have no linkage either to a new provider winning a customer through porting or pooling as part of number conservation. Nevertheless, under the current revenue-based mechanism, particular groups of carriers would be being required to bear a disproportionate burden of the costs generated from these activities.

Similarly situated providers with large revenue bases have experienced escalating LNP and pooling costs much like BellSouth. These providers are facing significantly greater contributions to cover their portion of the shared industry costs, despite the fact that not only are their revenues flat or declining but they also are generating fewer and fewer LNP and pooling transactions. As Qwest explains, it paid more than 22 percent of the shared costs for the Western region through November 2005, even though it generated less than 6 percent of the billable transactions in its region.⁴⁸ According to Qwest, its “allocation of the shared LNP and pooling costs has almost doubled since 2003, rising from \$2.4 [million] in 2003 to over \$4 [million] in

⁴⁶ Time Warner Opposition at 7.

⁴⁷ Verizon Comments at 4.

⁴⁸ Qwest Comments at 3.

2005. Yet from 2001 to 2005, Qwest's revenues have declined markedly (by almost ten percent)."⁴⁹ Verizon is in a similar position. Although Verizon has generated fewer and fewer transactions over the years, "reaching a low of approximately 835,000 transactions, or less than 1% of the industry total, in 2004, [] its allocated costs have steadily increased every year."⁵⁰ Verizon anticipates its allocated costs for 2005 to exceed \$18 million – nearly triple its 2001 contribution.⁵¹

Year-end data for BellSouth only confirms the growing "disconnect between the number of transactions a service provider generates and its allocated share of the transaction costs."⁵² For 2005, although BellSouth generated approximately two percent of the billable transactions in the Southeast region (down from 3% in 2004), its allocated share of the industry costs was more than 20% of the \$35 million costs for the region.⁵³ See Chart A.

⁴⁹ *Id.* at 4.

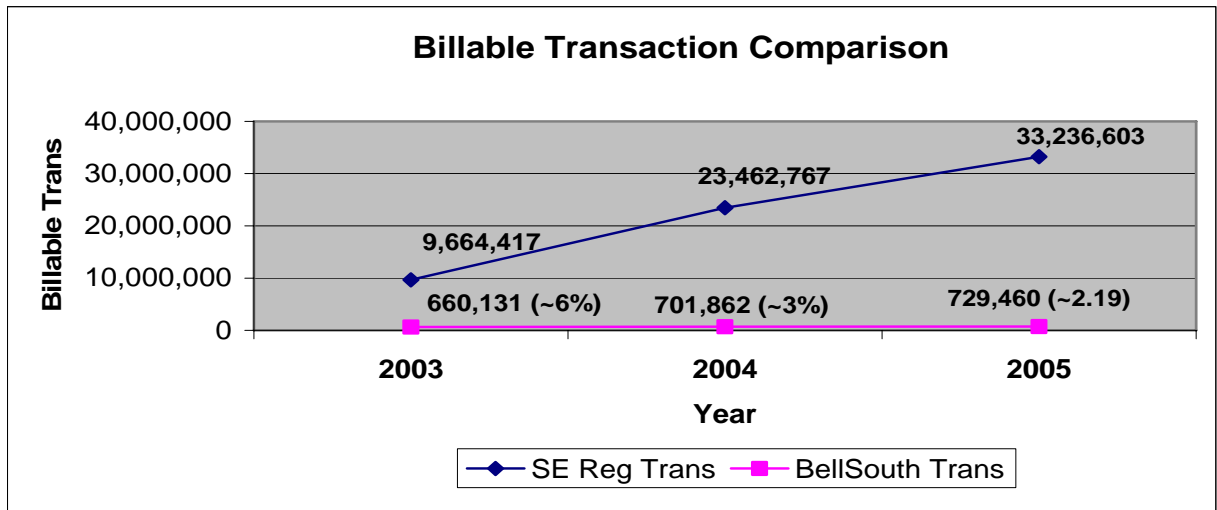
⁵⁰ Verizon Comments at 5.

⁵¹ *Id.*

⁵² *Id.*

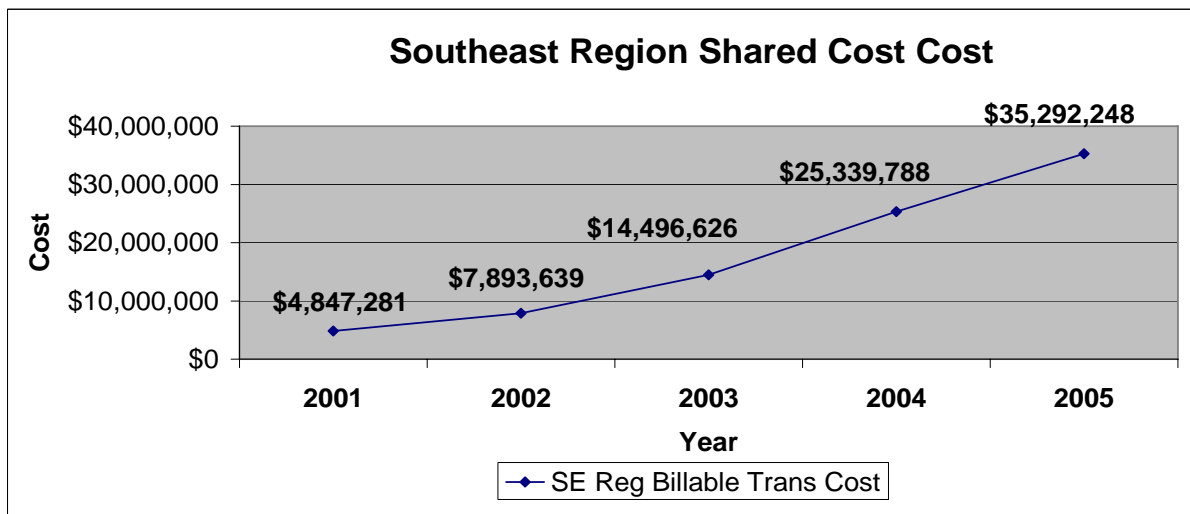
⁵³ The data in Charts A and B was compiled from BellSouth's monthly bills from NeuStar, which show the total billable transactions for the Southeast region.

CHART A



As the next chart shows, the shared industry costs for the Southeast region have increased dramatically over the past three years, rising from \$14.5 million in 2003 to \$35.3 million in 2005 – an increase of 250 percent.

CHART B



As more and more providers engage in activities that may or may not be directly related to porting or pooling, shared industry costs will continue to rise. Under the current revenue-based mechanism, large providers such as BellSouth will continue to bear a disproportionate and

inequitable cost burden. BellSouth therefore urges the Commission to issue a notice of proposed rulemaking that will consider a mechanism to eliminate this disparity.

IV. A USAGE-BASED MECHANISM WILL NOT COMPETITIVELY DISADVANTAGE NEW ENTRANTS, CLECS, OR WIRELESS PROVIDERS.

Some commenters assert that a usage-based mechanism could create a barrier to entry or burden new entrants, CLECs, and wireless carriers.⁵⁴ This argument is baseless. Parties opposing a usage-based mechanism have not provided any evidence to show that it is economically infeasible for a new entrant, CLEC, wireless, VoIP or other provider that wins a customer from an incumbent through porting to pay a nominal billable transaction fee, which is currently approximately \$1.⁵⁵ By winning that customer, the new carrier gains additional revenue associated with that customer, while the incumbent loses revenue. Claims that a provider winning a customer is unable to bear this nominal fee defy logic and economics.

The Commission also should not be persuaded by mischaracterizations of its previous findings regarding the legality of usage-based cost distribution mechanisms. According to Time Warner, “[t]he Commission concluded that ‘usage-sensitive’ cost recovery mechanisms fail the [competitive neutrality] standard.”⁵⁶ This assertion misstates the Commission’s conclusion. The Commission has never determined that a usage-based cost methodology violates the competitive neutrality mandate of Section 251(e)(2). In fact, the Commission, in establishing the cost recovery mechanism for interim number portability, explicitly found that at least four allocation

⁵⁴ See, e.g., CDTPUC Comments at 3; Time Warner Opposition at 4-5.

⁵⁵ The billable transaction rate in the Southeast region is currently \$1.05 per transaction. This rate is down from \$1.55 in 2001 and 2002, \$1.50 in 2003, and \$1.08 in 2004. The billable transaction rates in the other regions are comparable.

⁵⁶ Time Warner Opposition at 3-4.

mechanisms would meet the two-part [competitive neutrality] test, one of which was “requir[ing] each carrier to pay for its own costs.”⁵⁷

Moreover, when the Commission was considering the type of distribution mechanism to adopt for long-term LNP costs, it merely expressed some concern that, at least at the outset of LNP, it was preferable to pursue a revenue-based system. The Commission further acknowledged that there was no evidence in the record to show conclusively that usage-based charges would hamper a provider’s ability to compete for subscribers.⁵⁸ The agency merely indicated that it was “prudent at this early stage in the development of number portability to minimize such risk.”⁵⁹ Thus, the Commission is not foreclosed from considering and developing a usage-based mechanism that meets the competitive neutrality test of Section 251(e)(2).

It also is important to note that, when the Commission first adopted the current revenue-based mechanism in 1998, it did not know the fee associated with an LNP transaction. In the absence of such information and again, out of an abundance of caution, it may have been appropriate for the Commission to pursue a revenue-based system under the circumstances. However, now with years of experience with LNP and pooling, the Commission is in a much better position to gather necessary data and make an informed decision based upon today’s realities and access to data.

Other arguments against a usage-based cost distribution mechanism are also without merit. For example, Time Warner argues that, under a usage-based system, providers that do not use numbers would not contribute to the shared costs of LNP and pooling thereby violating the

⁵⁷ *Telephone Number Portability*, CC Docket No. 95-116; RM 8535, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8422, ¶ 136 (1996).

⁵⁸ *Third Report and Order*, 13 FCC Rcd at 11745, ¶ 88.

⁵⁹ *Id.* (emphasis added).

requirement in Section 251(e)(2) that “all telecommunications carriers” contribute on a competitively neutral basis.⁶⁰ This situation is no different than that which exists today under the revenue-based system. If a carrier does not have end-user telecommunications revenue, it still must contribute to the shared costs of number administration. The Commission’s rules require carriers that do not have any end-user telecommunications revenue to contribute \$25 to the shared costs for number administration.⁶¹ When the Commission first adopted the revenue-based mechanism, the fee was \$100 per year per region for carriers without end-user revenue.⁶² At that time, the Commission concluded that this fee would not “disparately affect the ability of competing carriers to earn a normal return because such a nominal charge is unlikely to affect a carrier’s return and, again, because all such carriers will face the same charge.”⁶³ Thus, the fact that some providers may not generate any LNP or pooling billable transactions is an insufficient basis for not considering a usage-based mechanism. The Commission could consider a similar flat fee system to address this situation in the context of shared LNP and pooling costs. Clearly, this issue is one that can be resolved through the requested rulemaking.

A number of commenters argue that, because all providers, including BellSouth, benefit from every billable transaction that adds, deletes, or modifies a record in the databases, a revenue-based mechanism is appropriate.⁶⁴ BellSouth does not dispute that all carriers benefit from the maintenance, operation and accurate updating of the LNP and pooling databases,⁶⁵ as

⁶⁰ Time Warner Opposition at 8.

⁶¹ 47 C.F.R. § 52.17(a).

⁶² *Third Report and Order*, 13 FCC Rcd at 11759, ¶ 113.

⁶³ *Id.*

⁶⁴ *See, e.g.*, Time Warner Opposition at 2, 11-12; T-Mobile Comments at 14.

⁶⁵ *See* Time Warner Opposition at 2.

well as the proper routing of calls based upon information uploaded to those databases.⁶⁶

BellSouth, however, does not agree that, given the current conditions in the marketplace and the evolving use of the databases, requiring particular carriers to bear a greater percentage of the shared costs based solely on the level of revenues meets the statute's requirement of competitive neutrality.

The benefits of LNP and pooling and the use of the regional databases can be measured in a number of ways. Customers benefit from having the flexibility to move from one service provider to another while retaining the same telephone numbers. Carriers benefit because customers are more willing to switch providers because they can keep their telephone numbers. The carrier that wins the customer benefits by receiving additional revenue from the new customer. Society benefits from the conservation of telephone numbers through pooling. Despite these benefits, and as the record reflects, the regional databases are being used in a manner and at a pace by which the link between these benefits and the costs shared by the industry is becoming less obvious. As competition continues to expand, the market continues to change, and the use of the regional databases continues to evolve, it is appropriate to re-evaluate the continuing lawfulness of the revenue-based cost distribution mechanism.

Finally, the Commission also should reject arguments which suggest that a cost distribution mechanism based on traditional principles of cost causation is *per se* anticompetitive. As Verizon points out, the Commission previously concluded that it was appropriate to distribute certain transaction costs on a cost-causer basis in the context of the SMS/800 database used to administer toll-free numbers.⁶⁷ In its decision, the Commission found that charging database users (known as "RespOrgs") a per transaction fee was consistent with the

⁶⁶ See T-Mobile Comments at 14.

⁶⁷ Verizon Comments at 10-11.

competitive neutrality mandate of Section 251(e)(2).⁶⁸ Specifically, the Commission stated:

“[W]e believe that SMS/800 system administration costs are borne in a competitively neutral manner because, under the tariff, costs are borne only by the parties causing the costs.”⁶⁹

Clearly, reliance on cost causation is not inconsistent with satisfying the statutory requirement of competitive neutrality.⁷⁰ BellSouth therefore urges the Commission to examine the various types of activities for which the regional databases are used today and craft a new distribution system that is competitively neutral and consistent with the traditional principles of cost-causation.

V. CONCLUSION

As the record clearly demonstrates, there are enough significant issues surrounding the current cost distribution methodology for shared and LNP pooling costs to justify the commencement of a rulemaking. Accordingly, BellSouth urges the Commission to issue without a delay a notice of proposed rulemaking to consider replacing the current method of allocating shared LNP and pooling costs based upon telecommunications revenues with a usage-based mechanism.

⁶⁸ *Toll Free Service Access Codes; Database Services Management, Inc. Petition for Declaratory Ruling; Beehive Telephone Company Petition for Declaratory Ruling*, CC Docket No. 95-155; NSD File Nos. L-99-87 & L-99-88, *Fifth Report and Order in CC Docket No. 95-155, Order in NSD File No. L-99-87, Order in NSD File No. L-99-88*, 15 FCC Rcd 11939, 11952-53, ¶¶ 36-37 (2000).

⁶⁹ *Id.*

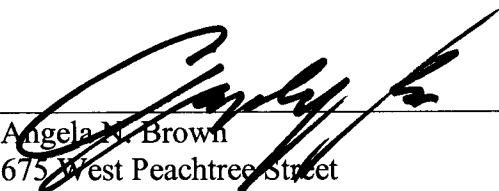
⁷⁰ Verizon Comments at 10.

Respectfully submitted,

BELLSOUTH CORPORATION

Its Attorney

By:

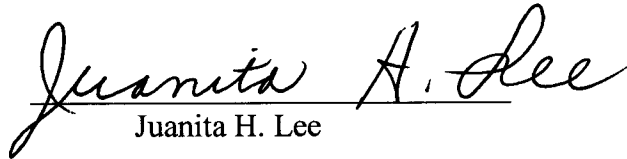


Angela N. Brown
675 West Peachtree Street
Suite 4300
Atlanta, GA 30375-0001
(404) 335-0724

February 6, 2006

CERTIFICATE OF SERVICE

I do hereby certify that I have this 6th day of February 2006 served the following parties to this action with a copy of the foregoing **REPLY TO COMMENTS ON PETITION FOR RULEMAKING** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed on the attached service list.



Juanita H. Lee

Service List RM-11299

Peter H. Jacoby
Jack Zinman
Gary L. Phillips
Paul K. Mancini
AT&T Inc.
1401 I Street, N.W., Suite 400
Washington, D.C. 20005

Carl Wolf Billek
Associate General Counsel
IDT Telecom, Inc.
520 Broad Street
Newark, New Jersey 07102-3111

Karen Zacharia
Amy P. Rosenthal
Verizon Telephone Companies
1515 North Courthouse Road
Suite 500
Arlington, VA 22201

Daniel Mitchell
Jill Canfield
National Telecommunications
Cooperative Association
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

Kathryn Marie Krause
Craig J. Brown
Qwest Communications
Suite 950
607 14th Street, N.W.
Washington, DC 20005

James W. Olson
Indra Sehdev Chalk
Jeffrey S. Lanning
Robin E. Tuttle
United States Telecom Association
607 14th Street, NW, Suite 400
Washington, DC 20005

Mary C. Albert
COMPTEL
1900 M Street N. W.
Suite 800
Washington, D. C. 20036

J. C. Harrington
Cox Communications, Inc.
Dow, Lohnes & Albertson, P. L.L.C.
1200 New Hampshire Avenue, N. W.
Suite 800
Washington, D. C. 20036

Carrington F. Phillip
Vice President, Regulatory Affairs
Donald L. Bosby
Senior Counsel
Cox Communications, Inc.
1400 Lake Hearn Drive, N. E.
Atlanta, Georgia 30319

John P. (Jay) Nusbaum
Integra Telecom
1201 NE Lloyd Blvd.
Suite 500
Portland, Oregon 97232

Brad E. Mutschelknaus
Thomas Cohen
Heather T. Hendrickson
XO Communications Services, Inc.
Xspedius Communications, LLC
Kelley Drye & Warren LLP
1200 19th Street, N. W., Suite 500
Washington, D. C. 20036

Thomas Jones
Grace Koh
Time Warner Telecom
Willkie Farr & Gallagher LLP
1875 K Street, N. W.
Washington, D. C. 20036

Thomas Sugrue
Kathleen O'Brien Ham
Anna Miller
T-Mobile USA, Inc.
401 9th Street, N. W., Suite 550
Washington, D.C. 20004

Todd D. Daubert
Garrett Hargrave
T-Mobile USA, Inc.
Kelley Drye & Warren LLP
1200 19th Street, N. W.
Suite 500
Washington, D. C. 20036

+Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
The Portals, 445 12th Street, S. W.
Room TW-A325
Washington, D.C. 20554

+Best Copy and Printing, Inc.
The Portals, 445 12th Street, S. W.
Room CY-B402
Washington, D. C. 20554

Donald W. Downes, Jack R. Goldberg,
John W. Betkoski, III, Anne C. George,
Anthony J. Palermino
Connecticut Department of
Public Utility Control
Ten Franklin Square
New Britain, CT 06051

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